

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Appeal No.635 of 2001
(Old No. 349 of 1997)

Kashi Ram, S/o Sri Vikram
R/o P.S. Khatima,
Distt. Udham Singh Nagar.

..... Appellant

Versus

The State

..... Respondents

Mr. Dharam Veer, Senior Advocate assisted by Mr. Modh. Azim,
Advocate for the appellant.
Mr. H.C. Pandey, Asstt. Government Advocate assisted by
Mr. Rajeev Mohan, Brief Holder for the respondent-State.

Hon. Prafulla C. Pant, J.

This appeal, preferred under Section 374 of the Code of Criminal Procedure, 1973, is directed against the judgment and order dated 28.01.1997 passed by, then 1st Additional Sessions Judge, Nainital in Sessions trial No. 303 of 1993, whereby the appellant Kashi Ram was convicted under Section 324 of the Indian Penal Code, 1860, and sentenced to undergo six months rigorous imprisonment and fine of Rs. 2,000/- in default of payment of which he had to undergo further two months rigorous imprisonment.

2) The prosecution case, in brief is that a F.I.R. (Ext. A-1) was lodged by one Tilak Raj on 21.11.1991 at 8.35 A.M. at Police Station Khatima against the appellant and two other persons namely, Ram Dulare and Lalta Prasad. It is alleged in the F.I.R. that complainant was an employee of the Forest Department and living in Teraghat for about 11 years before the incident. Applicant Kashi Ram was a co-tenure holder who

with the help of Lalta Prasad starting nursing grudge against the complainant and wanted the complainant to vacate the land. On 20.11.1991, at about 9.45 P.M., complainant noticed some sound near his door. When he came out of the Jhala, he found that appellant Kashi Ram alongwith Ram Dulare and Lalta Prasad were running away after setting the Jhala on fire. When the mother of the complainant tried to stop the appellant he fired shots from his pistol at her and fled away. The Police registered a criminal case No. 531 of 1991 and investigated the crime. After investigation, the Police submitted the charge sheet against above three accused for their trial in respect of the offences punishable under Section 307 and 436 of the I.P.C. After taking the cognizance, the Magistrate committed the case to the court of Sessions, where it was entered as Sessions Trial No. 303 of 1993. After hearing the parties, charges in respect of the offences punishable under Section 307 and 436 of the I.P.C. were framed against appellant Kashi Ram and as against other accused persons only charge under Section 436 read with Section 34 of the I.P.C. was framed. All the three accused pleaded not guilty and claimed to be tried. Learned Sessions Judge recorded the statements of P.W. 1 Tilak Raj; P.W. 2. Madan; P.W.3, Smt. Shyamrati (injured); P.W.4 Dr. H.S. Soun and P.W. 5 Sri J.C. Pathak (Investigating Officer). In the form of documentary evidence, written report (Ext. A-1); medical report (Ext. A-2); site plan (Ext. A-3); Charge sheet (Ext. A-4) ; charge sheet (Ext. A-5) and Chick report of the F.I.R. (Ext. A-6) and copy of the general diary (Ext. A-7) were proved.

3) Following injuries were found on the person of Smt. Shyamrati on medical examination :-

- i) *Gunshot wound over right side of back 6 cm below lower angle of scapula 0.4 cm X .04 cm muscle deep, blackening absent.*
- ii) *Gunshot wound .4 cm X .4 cm at the level of post axillary line about 8 cm from injury No. 1 below muscle deep. Blackening absent, right side.*
- iii) *Gunshot wound over posterior superior level spine .4 cm X .4 cm muscle deep, blackening absent right side.*
- iv) *Gunshot wound .46 cm X .4 cm over mid of right lip 6 cm medial to the right injury No. 3, muscle deep, blackening absent.*
- v) *Gunshot wound .4 cm X .4 cm muscle deep over upper lateral and posterior aspect right lip, blackening absent.*
- vi) *Gunshot wound 4 cm X .4 cm muscle deep over right lateral aspect (lower) of thigh muscle deep blackening absent and over left part aspect of lower thigh, .46 X 4 cm muscle deep.*

The injuries caused by gunshot about ½- 1 day old.

4) The evidence was put to the accused persons under Section 313 of the Cr.P.C. and after giving the accused persons opportunity to adduce evidence and after hearing the parties, learned Sessions Judge found that charge under Section 436 was not found proved against any of the accused and all the three accused were acquitted of the said charge. However, accused Kashi Ram (appellant) was found guilty of offence punishable under Section 324 of the I.P.C., and after hearing, he was sentenced to undergo six months rigorous imprisonment and directed to pay Rs. 2,000/- and in default of payment of which, further two months rigorous imprisonment is directed to be served out by him. Aggrieved by said judgment and order

dated 28.01.1997, this appeal was preferred before the Allahabad High Court, which was registered as Criminal Appeal No. 349 of 1997. Subsequently, on transfer of this appeal under Section 35 of the U.P. Re-organization Act, 2000 to this Court, it was re-numbered as Criminal Appeal No. 635 of 2001.

5) I heard learned counsel for the appellant and learned A.G.A. for the State and perused the evidence and entire record, including the record of the trial court.

6) Learned counsel for the appellant submits that the appellant is in jail and has already undergone 104 days in jail and has also deposited fine of Rs. 1,000/-. It was prayed that sentence may be reduced to the period already undergone. The appeal was not argued on merits. Learned A.G.A. submits that he has no objection if the sentence is reduced to period already undergone as the occurrence is of the year 1991. considering the facts and circumstances and evidence on record, this Court finds no error in the impugned conviction and holds that the appellant was rightly found guilty of the offence punishable under Section 324 of the I.P.C. However, as to the sentence, considering the facts and circumstances of the case, the sentence awarded by the learned Sessions Judge is reduced to 104 days which the appellant has already undergone and fine is also reduced to Rs. 1,000/-, which the appellant has already deposited.

7) The appeal is finally disposed of in the aforesaid terms.

(Prafulla C. Pant, J)

Dt. 19th December, 2005.
H. Negi